

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARIA ROSA GRASSIA,

Plaintiff,

MEMORANDUM
AND ORDER

-against-

18-CV-01621 (NG)

SCHINDLER ELEVATOR CORPORATION,

Defendant.
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ROANNE L. MANN, CHIEF UNITED STATES MAGISTRATE JUDGE:

In an Order To Show Cause dated April 3, 2018, directing defendant Schindler Elevator Corporation (“Schindler”) to justify its premature removal of this action, this Court summarized the case law in this Circuit that squarely holds that a case filed in state court does not become removable on the basis of diversity jurisdiction “until the plaintiff serves the defendant with a paper that specifies the amount of monetary damages sought.” Order To Show Cause (Apr. 3, 2018) (“OTSC”) at 1, Electronic Case Filing Docket Entry (“DE”) #7 (quoting, *inter alia*, Moltner v. Starbucks Coffee Co., 624 F.3d 34, 38 (2d Cir. 2010)). This Court specifically observed that information concerning plaintiff’s medical condition or history – on the basis of which Schindler asked the Court to infer that the damages exceed \$75,000 – is insufficient to satisfy the jurisdictional threshold. See OTSC at 2 (collecting cases).

In response, Schindler proffered a series of jury verdicts in other cases and, citing decisions that predated the Second Circuit’s decision in Moltner and its progeny, relied on plaintiff’s refusal to stipulate to cap the damages at \$75,000. See Response to Order to Show Cause (Apr. 9, 2018) at 3, 9-10, DE #8. Absent any further developments in the case, this

Court would have recommended that the action be remanded to state court, where Schindler could have availed itself of state procedures to secure from plaintiff a statement of the total damages to which plaintiff claims to be entitled. See N.Y. C.P.L.R. § 3017(c).¹

Nevertheless, after Schindler responded to the Order To Show Cause, plaintiff served (and Schindler filed) a statement of damages in the amount of \$450,000. See Exhibit to Addendum to Memorandum of Law in Response to Order to Show Cause (Apr. 13, 2018), DE #9-1.

Under these circumstances, the Court will not recommend a remand to state court.

Nevertheless, Schindler is admonished for continuing to remove cases to federal court without first securing the requisite written statement – or *evidence* - of damages in excess of \$75,000.

SO ORDERED.

**Dated: Brooklyn, New York
April 26, 2018**

/s/ *Roanne L. Mann*
ROANNE L. MANN
CHIEF UNITED STATES MAGISTRATE JUDGE

¹ As Schindler is constrained to concede, this is not the first time that it sought to remove a case from state court without the requisite statement of damages. See *Palmer v. Schindler Elevator Corp.*, 17-cv-3619 (ARR)(RLM), 2017 WL 3037411 (E.D.N.Y. July 18, 2017) (remanding prematurely removed case to state court).